

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

MICHAEL DAVID SHAW,

Plaintiff,

v.

**9:12-CV-1281
(FJS/CFH)**

S. PRINDLE, Correction Officer,

Defendant.

APPEARANCES

OF COUNSEL

MICHAEL DAVID SHAW

05-A-0177

Fishkill Correctional Facility

P.O. Box 1245

Beacon, New York 12508

Plaintiff *pro se*

**OFFICE OF THE NEW YORK
STATE ATTORNEY GENERAL**

The Capitol

Albany, New York 12224

Attorneys for Defendant

RACHEL M. KISH, AAG

SCULLIN, Senior Judge

ORDER

Plaintiff brought this action pursuant to 42 U.S.C. § 1983, alleging that Defendant Prindle violated his constitutional rights under the Eighth Amendment by sexually assaulting him during a pat frisk. As a result of this incident, Plaintiff asserted that he suffered pain in his left foot, extreme emotional distress, sleeplessness, mental anguish, insecurity, anxiety, fear and humiliation. *See Amended Complaint at 13.*

On May 4, 2015, Defendant filed a motion for summary judgment. Plaintiff opposed that

motion. In a Report-Recommendation and Order dated July 10, 2015, Magistrate Judge Hummel recommended that this Court grant Defendant's motion. *See* Dkt. No. 54 at 14. Plaintiff filed objections to that recommendation. *See* Dkt. No. 55.

After reviewing a magistrate judge's recommendations, the district court may accept, reject or modify those recommendations. *See* 28 U.S.C. § 636(b)(1). The court reviews *de novo* those portions of the magistrate judge's recommendations to which a party objects. *See Pizzaro v. Bartlett*, 776 F. Supp. 815, 817 (S.D.N.Y. 1991). ""If, however, the party makes only conclusory or general objections, . . . the Court reviews the Report and Recommendation only for clear error.""
Salmini v. Astrue, No. 3:06-CV-458, 2009 WL 179741, *1 (N.D.N.Y. June 23, 2009) (quoting [Farid v. Bouey, 554 F. Supp. 2d 301] at 306 [(N.D.N.Y. 2008)] (quoting *McAllan v. Von Essen*, 517 F. Supp. 2d 672, 679 (S.D.N.Y. 2007))). Finally, even if the parties file no objections, the court must ensure that the face of the record contains no clear error. *See Wilds v. United Parcel Serv., Inc.*, 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (quotation omitted).

In this case, Plaintiff objects, generally, to some of the cases on which Magistrate Judge Hummel relied in reaching his decision and to Magistrate Judge Hummel's interpretation of the holdings of those and other cases. Despite the general nature of Plaintiff's arguments, the Court has reviewed the entirety of Magistrate Judge Hummel's decision *de novo*. Having completed its review of the entire file in this matter and the applicable law, the Court hereby

ORDERS that Magistrate Judge Hummel's July 10, 2015 Report-Recommendation and Order is **ACCEPTED in its entirety for the reasons stated therein**; and the Court further

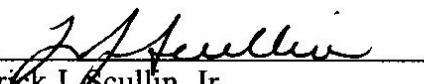
ORDERS that Defendant's motion for summary judgment is **GRANTED**; and the Court further

ORDERS that Plaintiff's appeal from Magistrate Judge Hummel's April 3, 2015 Order denying Plaintiff's request for a copy of Defendant's personnel file, *see* Dkt. No. 48, is **DENIED as moot**; and the Court further

ORDERS that the Clerk of the Court shall enter judgment in favor of Defendant and close this case.

IT IS SO ORDERED.

Dated: August 10, 2015
Syracuse, New York



Frederick J. Scullin, Jr.
Senior United States District Judge